

EXHIBIT 9

From: Richard Levin <RLevin@cravath.com>
Sent: 4/14/2009 2:55:36 AM +00:00
To: "Cymrot, Mark" <BH/WASHINGTON DC/RECIPIENTS/MCYMROT>;
"Lucchesi, Thomas" <BH/US/BAKER & HOSTETLER
RECIPIENTS/CLEVELAND/LUCCHESI>; "Hirschfield, Marc E."
<BH/NEW YORK/RECIPIENTS/MHIRSCHFIELD>
CC: Ronald Rolfe <RRolfe@cravath.com>
Subject: Madoff-Optimal Draft Settlement Agreement
Attachments : NYCorp_3137863_3.DOC; NYCorp_3138253_1.DOC

Mark, Tom and Marc:

Attached is a draft of the Settlement Agreement and of a side letter from Banco Santander. Apologies for the delay in getting these to you. The drafts required more consultation than I had anticipated.

A few points to note.

1. These drafts have not yet been reviewed by our clients or our co-counsel, so they remain subject to their review and comment, as well as further internal review and revision.
2. We have split apart the Santander obligation, which relates only to the non-filing of investor claims in the case, into a separate letter agreement, because Santander's obligations related only to this one point, not the entire Settlement Agreement, and also to stress that Santander and the Optimal Companies are managed and operated separately. Please note that we expect that both the Settlement Agreement and the Santander letter agreement would be executed contemporaneously and both presented to the Bankruptcy Court as part of a package for approval.
3. The MFN paragraph and the Release paragraph are in brackets in the draft. I put them in brackets so as not to suggest that we were not cognizant of the remarks you made about each of them when we met last week. However, we do not yet have your mark-up, and we also had some drafting revisions. So I left them in the draft in our current version, subject to your comments. On the MFN, we have attempted to improve and clarify the drafting, without any substantive change. On the Release, we have shortened and simplified it, first, to limit the release for all releasees to actions related to the Optimal Companies and second, to reflect that Santander is no longer a party to this Agreement.
4. The Settlement Agreement does not contain anything about the discussion we have yet to have with you on the estimates of assets and liabilities in the estate. We do not feel that this needs to be part of the Agreement itself, but our Boards will not feel comfortable authorizing and approving this Agreement until we have that information from you in a manner that you can assure us is your best information to date. (That is, and not meaning to be impertinent, our Boards will obviously needs something more than office pool numbers.)
5. We would intend to make an announcement about the Settlement Agreement once it is signed, as we know that you will need to file it with the Court promptly. Please let us know if you want to coordinate public statements.
6. We are still checking the Arbitrage claim/account amount. We will have that information to you as soon as we are able. Therefore, the Arbitrage allowed claim amount remains in brackets.

I look forward to hearing from you at your earliest convenience.

Best regards,
Rich

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